

EXHIBIT D

1 with one promotion but not the two that were over filled
2 in December. And I indicated we would not move forward
3 at that time.

40

4 Q. Let's just reference this. This was marked as
5 Exhibit 6 at the Navarro deposition. I would like you to
6 reference that if you can. Is this the letter or memo,
7 rather, that you were referring to?

8 A. It is.

9 Q. And it's dated June 9, which is consistent with
10 what you just testified to, correct?

11 A. June 29th.

12 Q. Sorry. June 29th. So you said that you were
13 moving ahead with one rather than three sergeant
14 positions, correct?

15 A. That is correct.

16 Q. And what was your understanding, if any, as to
17 Corporal Navarro's status?

18 MR. GODDESS: At the time he wrote that
19 memo?

20 MR. MARTIN: Yes. Thank you.

21 THE WITNESS: By this time, I had seen a
22 list of officers who were eligible for promotion, I
23 think, down through the top 10 or 15. And I can't say I
24 paid a whole lot of attention to who the top five were.



1 But subsequent to this memo and the promotion of Sergeant
2 Treadwell, I was aware of the fact that Corporal Navarro
3 was not in the first five on the list at that point.

4 BY MR. MARTIN:

5 Q. What did that mean to you?

6 A. That if he was not in the first five that he
7 could not be promoted. The county procedure is that you
8 have to be in the top five in order to be considered for
9 promotion and that the colonel has the ability to take
10 anyone within the top five.

11 Q. And if there are three positions that are to be
12 filled, you don't look at the top five, correct, you look
13 beyond the top five?

14 A. What we did was, each time there was a promotion,
15 we asked the colonel and then the lieutenant colonel in
16 two subsequent promotions to focus on the top five and
17 make a decision. Having made that decision, if there was
18 another promotion to move the sixth person on the list
19 into that group of five and then rediscuss the promotion
20 so that each time you made a promotion you were only
21 looking at the top five.

22 Q. Are you saying that your review of the list told
23 you that Navarro was not eligible to be promoted?

24 A. Not prior to. I got an E-mail from human



1 resources that gave me a list of 10 to 15 people -- I
2 can't remember how many -- who were eligible on that
3 sergeant's list. And I don't know that I ever sat there
4 and counted down to see how many would be considered, if
5 there was one, how many, if two, how many, and if three.
6 That was not my reason for requesting the list.

7 Q. Did you have an understanding that Colonel
8 McAllister wanted to promote Corporal Navarro to
9 sergeant?

10 A. No.

11 Q. Did you ever learn that?

12 A. Yes.

13 Q. When did you learn that?

14 A. In subsequent discussions. Probably after the
15 lawsuit was filed, it became clear that that was the
16 colonel's intent. When the colonel and I talked early in
17 my tenure, he mentioned that he wanted to promote an
18 Hispanic, a female and an African-American. And to the
19 best of my memory, he never told me who they were.

20 Q. Did you look to figure out who was who?

21 A. I had that list. But, frankly, I couldn't tell
22 who was Hispanic and who was black. Because of the
23 people on the list at that point, I think the only one I
24 knew was Corporal Navarro. And the reason I knew him, he

1 yet and/or -- I didn't make the presentation. Colonel
2 McAllister did because I had nothing to do with the
3 formation of the budget. Somebody could probably give
4 you that date when the budget presentation was made for
5 public safety.

6 But my understanding, as time went on, was
7 that the number of positions in public safety is a factor
8 in determining whether or not sufficient monies are
9 placed into the personnel line, and that the numbers are
10 only critical leading up to the passage of the budget.
11 And once the budget passes -- and I guess this is county
12 wide because, again, I still have trouble understanding
13 this way of doing business -- but that once the budget
14 passes, the numbers become immaterial and it's the money
15 that you have. And it's based upon the money as to
16 whether or not you can over fill, over promote, whatever
17 you want to do.

18 As long as you have the money within the
19 department, you are permitted to make those kind of
20 adjustments at any point in the budget year, which is
21 what I understand occurred in December. In the fiscal
22 year, '05, budget, there were 36 sergeants. And the
23 colonel decided to go to 38 and promoted two additional
24 sergeants in December of '04. The budget that passed for



1 '06 included 38 sergeants.

2 And by the time June 29th arrived and I
3 issued this memorandum, I had heard from many, many
4 sources, both internal and external, that the most
5 critical need in the police department, at that point,
6 was for patrol officers. And this was given the fact
7 that we had 12 vacancies at that point in time. We were
8 not going to start in academy until, at the earliest,
9 November or December. And that eventually got pushed off
10 until March. And that we could ill afford to lose more
11 patrol officers.

12 Throughout my first two or three months, the
13 CAO and I discussed this. And my recommendation to him
14 was that, at least for the time-being, we not fill the
15 37th and 38th position. And we were in the process of
16 attempting to secure a contract to follow up on the
17 Southern Institute Study that had been conducted in 2000.
18 It was our intent, as part of that process, to have
19 whoever won the contract look at the authorized strength
20 of the department and the strength within each of the
21 ranks in the department. And that was the second reason
22 that I didn't feel it was appropriate to move forward
23 with the two additional positions until we had that
24 report in hand.



1 Q. And that report was eventually done by PERF; was
2 it not?

3 A. That's correct.

4 Q. And that was issued April of '06?

5 A. That's correct.

6 Q. But you did make more sergeants in December; did
7 you not, without having that report?

8 A. We filled up to the 36th sergeant. In other
9 words, we didn't increase the authorized strength beyond
10 36. We filled up to the 36th and left the 37th and 38th
11 vacant pending the PERF report.

12 Q. Isn't it fair to say that you had, before June
13 29, had promised that there would be three new sergeants
14 made at the time of the new fiscal year on July 1, 2005?

15 A. In a meeting held, called by the colonel, Colonel
16 McAllister, through the FOP, President Ellwein, and I
17 think involving the top 10 officers on that list, we sat
18 with them and discussed the fact that there was one
19 opening by virtue of the '05 budget and there were two
20 openings by virtue of the '06 budget for which he had
21 over promoted in December.

22 And Colonel McAllister made the statement
23 that he and I had been working on this issue and that it
24 was our intention to promote three sergeants after the

1 1st of the fiscal year. And, at some point, it came
2 around to me. And I said that is my intention.

3 Q. And you communicated that intention?

4 A. I did.

5 Q. To the people who were --

6 A. In attendance.

7 Q. And they included those who stood to be promoted?

8 A. That's correct.

9 Q. So you made that statement to them that that was
10 your intention?

11 A. And that was in mid May. Exact date, I can't
12 remember now.

13 Q. And then it was on June 29 by way of memo that
14 you decided not to make those promotions?

15 A. After consulting with the CAO and receiving his
16 concurrence, I issued this memo saying that we would not.
17 I met with those same parties -- it wasn't everyone that
18 attended the first meeting, but I met with the same group
19 of officers in my office. I believe it was that
20 afternoon. I apologized for my statement in May. I told
21 them that I had learned more information since then, that
22 it had changed the backdrop against which I had
23 originally intended to make those promotions and that, at
24 this point, would not be move forward with the additional



1 two promotions.

2 I was asked, at that point, if I would
3 guarantee that all the rest of the sergeants' promotions
4 would be filled. And I said, having learned a lesson in
5 this situation, I won't make guarantees. We'll fill them
6 as they come open or advise you that we will not be
7 filling them.

8 So while Corporal Navarro looked for a
9 commitment from me to move forward with promoting, any
10 openings that occurred afterwards, I could not make that
11 commitment. There were two subsequent promotions.

12 Q. Now, you said that this decision announced on
13 June 29th -- and by the way, was Corporal Navarro in
14 attendance when you made this apology?

15 A. He was.

16 Q. Now, this was your decision not to make these
17 other two sergeant promotions, correct?

18 A. I made that statement in the meeting. And I did
19 that because -- the colonel and I did not agree on this
20 decision. He advocated for the two sergeants and did not
21 agree with my position. I wanted to make it clear to
22 that group that this was coming from the director's
23 office and that no way had the colonel conceded or been
24 involved in a consensus process to reach this decision.

1 And I made that statement because, in my
2 experience with the Wilmington Police Department, in all
3 the training that I had as a sergeant and as a manager,
4 you always take responsibility for the bad news and you
5 always share the good news. And I didn't want to leave
6 any doubt in the officer's mind in that meeting that this
7 was something that the colonel had embraced.

8 Having said that, the chief administrative
9 officer was fully aware of the memo that was going to be
10 sent out. And I say that because when I met with him on
11 the 29th, before or after we had this discussion with
12 Allison Levine, I previewed the draft language I was
13 going to use in this memo. And he thought that it should
14 be shorter and more succinct. And I made those changes
15 before issuing that memo that afternoon.

16 Q. I'm sorry. What does this have to do with
17 Allison Levine? I missed that.

18 A. I'm just saying that it occurred the same day on
19 the 29th. So at some point as we are trying to work
20 through that, we discussed the memorandum that I was
21 going to issue on the sergeants' positions. He looked at
22 it, offered some amendments, and I incorporated those
23 amendments into the memo that was handed to Colonel
24 McAllister later that day.



1 Q. As I understand it, I think you have so
2 testified -- and correct me if I'm wrong -- when you met
3 with these officers who were to find out that they were
4 not going to be promoted, at least at that point, you
5 told them that it was your decision and your decision
6 only?

7 A. That's correct. The message I was trying to
8 impart was that this was coming from me and not the
9 colonel. I didn't want the colonel to, in any way, be
10 blamed for this. He fought hard and vigorously to
11 preserve these two positions. And it was only after what
12 I learned between joining the county April the 18th and
13 my recommendation to the CAO on June the 29th that we not
14 proceed with those two promotions, that we made the final
15 decision. I didn't want any of the officers thinking
16 that it was their chief undercutting them.

17 Q. As I think I understand, you met with the CAO
18 before you issued this memo. You said he helped edit the
19 memo for you?

20 A. That's correct.

21 Q. And so that decision was made on June 29th; it
22 was not made before that?

23 A. That's correct.

24 Q. Is there any reason why Allison Levine knew about

One of the other factors that I was
struggling with at that point was, probably the third or
fourth week in, I'm told we have a \$500,000 deficit in
the department of public safety. And I told the colonel
that I was having some real problems with promoting the
37th and 38th sergeant until after the 1st of the fiscal
year because there wasn't money for it in the budget. We
were broke. We had to have a special appropriation of
about 500, \$600,000 to get through the end of the fiscal
year.

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17 At that point, he indicated that we would
18 just wait and do all three after the 1st of the fiscal
19 year. That happens prior to the meeting with the FOP
20 members on about the 17th or 18th, which is when we tell
21 them that the promotions will occur after the 1st of the
22 fiscal year.

23 Q. Now, isn't it fair to say that the county was
24 paying acting sergeants during this time period?



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1 to make sure that people were getting opportunity to move
2 about in the department, to gain experience within
3 specialized divisions and that type of thing. So I was
4 interested in and, at times, we would review with the CAO
5 those kind of personnel moves.

6 Q. It's your testimony that the chief of police runs
7 the New Castle County Police Department?

8 A. Yes.

9 Q. And in that capacity, does transfers, promotions,
10 that type of thing?

11 A. Yes.

12 Q. Troop assignments?

13 A. The functions that were prescribed in Title 9.
14 Now, that was the scheme up until November when an
15 ordinance was passed that delineated the responsibilities
16 and authority of the director of public safety. So all
17 that changed somewhat.

18 Prior to that, I knew that any power or
19 authority or responsibility that I had flowed through the
20 CAO. And that's one of the reasons that we were in such
21 close contact on issues, that if there was something
22 critical that I needed to do, particularly in police.
23 The same issues did not present themselves in paramedic,
24 911 or in OEM because there were not these Title 9

EXHIBIT E

1 role with that department, as I have with the seven
2 other departments of county government.

3 Q. Let me stop you there, if I may, for a moment.
4 You are saying by law the director of public safety
5 reports to you. Has this always been the law of New
6 Castle County?

7 A. No. That was -- there was a period of time, I
8 think something approaching eight years, where there
9 was no director of public safety. So the law needed
10 to be amended to reestablish responsibilities of the
11 director of public safety. And I believe that was
12 adopted in November. So up until that date, the law
13 that was on the books actually provided that that
14 department was headed by the chief of police.
15 However, I have been advised that I have, both the
16 County Executive and I have broad authority to
17 delegate responsibilities. And the director of public
18 safety until November functioned under that
19 delegation.

20 Q. Let me set the stage here. When did you join
21 the administration?

22 A. On the first day the administration was in
23 office, in January 2005.

24 Q. What is your official title?

1 is correct, there was not a role defined for the
2 director of public safety. So my role was more direct
3 in oversight of the department. However, as I
4 indicated, I exercised my prerogative to delegate much
5 of my responsibility to the director of public safety.

6 Since November, we have on the books a
7 clear delineation of the responsibility of the
8 director of public safety. So he functions in that
9 role, and he reports to me.

10 Q. Do I understand that then that really there has
11 not been any change in your role as CAO as a result of
12 that ordinance?

13 A. Well, there's certainly been a change in the
14 Code. In terms of my role, my responsibility for
15 oversight of public safety, is, essentially,
16 unchanged. What's changed is to formally clarify the
17 role of director of public safety.

18 Q. So that before this ordinance became effective,
19 in your role as CAO, you delegated some authority to
20 the director of public safety that has now been
21 codified, if you will?

22 A. That is correct.

23 Q. Okay. Now, in terms of your role -- and I
24 think you have used the term "oversight" on a couple

1 significant events within their department. You might
2 call it a philosophy of no surprises. Much of what I
3 am kept informed of are matters that are managed by
4 the general managers of the department, and unless
5 something gives me a concern, my role will be to
6 receive those reports and allow the managers to
7 proceed as they have proposed.

8 Q. You mentioned the term "general managers" --

9 A. That term varies from department to department.

10 Q. Well, with regard to the Police Department, who
11 is the general manager?

12 A. The director of public safety.

13 Q. And was that true throughout your
14 administration even during the time when the ordinance
15 was not in effect?

16 A. No. On a formal basis, before that ordinance
17 was enacted, County Code provided that the chief of
18 police was the head of the department.

19 Q. So did the chief, in effect, serve as the
20 general manager?

21 A. Up until the arrival of director Sapp, the
22 chief absolutely did. After the arrival of director
23 Sapp, as I've indicated, I chose and the County
24 Executive chose to delegate to Mr. Sapp some of our

1 indicated generally in the past the incumbent PIO
2 stays in that position until they are transferred.
3 But she indicated that he was unhappy with the
4 position to the point where he would -- he might seek
5 or was seeking, was considering seeking a transfer,
6 even with or without a promotion.

7 Q. Do you know whether a decision had been made at
8 that point as to the promotion of sergeants on July 1?

9 A. Promotion of sergeants on July 1. What
10 decision are you referring to?

11 Q. Well, do you have any recollection as to
12 whether there were any decisions that were made as to
13 whether anyone was going to be promoted to sergeant at
14 the beginning of the new fiscal year?

15 A. There was discussion of whether additional --
16 there really are two -- there really are two different
17 issues there. One was the filling of vacancies. I
18 believe at that point, we were coming up on the
19 filling of the vacancy. And I am not sure of the
20 date, but I believe it was in July that we filled the
21 vacancy created by, I believe the retirement of the
22 sergeant. There was also discussion over the course
23 of time in the spring about whether there was a need
24 to create additional sergeant positions over and above



1 those that had been in place previously.

2 Q. Did you have any understanding as to whether
3 take issue of increasing the number of sergeants had
4 gone to and been approved by The County Council?

5 A. They were -- the additional positions were --
6 were part of the budget plan, although actually the
7 County Council does not approve the number of
8 positions at each rank. They approve, if you will
9 look at the budget ordinance, it approves a total
10 number of positions for the department and does not
11 specify them by rank.

12 Q. What was your understanding, if any, as to, at
13 the point of that meeting that you had with
14 Ms. Levine, as to any decisions had been made to
15 promote sergeants?

16 A. There certainly had not been a decision made to
17 promote any additional sergeants at that point.

18 Q. Were you aware that director Sapp had promised
19 that there would be three sergeant promotions that
20 would be made on or before July 1?

21 A. I think he -- my recollection is he did make a
22 statement at one point and then subsequently corrected
23 it.

24 Q. He corrected it at your insistence?

